IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE J.B.KOSHY

WEDNESDAY, THE 28TH FEBRUARY 2007 / 9TH PHALGUNA 1928

CRL.A.No. 639 of 2000()

CC.24/1999 of ENQUIRY COMMSSIONER & SPECIAL JUDGE, TRIVANDRUM

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APPELLANT: COMPLAINANT

STATE OF KERALA, REP.BY THE
PUBLIC PROSECUTOR.

BY PUBLIC PROSECUTOR SRI.K.C.SANTHOSHKUMAR

RESPONDENTS: ACCUSED

S.SADASIVAN PILLAI,
FORMERLY CASHIER, GOVERNMENT
CENTRAL PRESS, TRIVANDRUM.

THIS CRIMINAL APPEAL HAVING BEEN FINALLY HEARD ON 28/02/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

J.B.KOSHY, J.

Crl.Appeal No.639 OF 2000

Dated 28th February, 2007

JUDGMENT

This appeal is filed against an order of acquittal. Notice in this appeal was ordered on 16.10.2000, but, it is not returned after service. No effective steps were taken so far to cure the defects. Without serving notice on the accused, an order of acquittal cannot be reversed. However, to avoid injustice, I have looked into the merits of the case also.

2. The respondent was charge sheeted for the offences punishable under Sections 409 & 477-A of the Indian Penal Code and Section 13(2) read with Section 13(1)(c) of the Prevention of Corruption Act, 1988. The prosecution case is that the accused, while working as Cashier in the Government Central Press, Trivandrum from 31.1.198 to 22.2.1989 and as such being a public servant committed criminal misconduct and criminal breach of trust by dishonestly and fraudulently misappropriating a sum of Rs.46,580/= by falsifying the accounts of the Government Central Press by showing in the Cash Book that remittances of Rs.27,249/= and Rs.549/= are made on 24.1.1989 as per chalan

Nos.3865 and 3866 and remittances of Rs.8,771/= and Rs.522/= are made on 25.1.89 as per chalan Nos.4681 and 4682 at the District Treasury, Trivandrum, those amounts being departmental collections and that remittance of Rs.9,489/= is made on 31.1.1989 at the District Treasury, Trivandrum and Sales Tax without remitting the same in the treasury and thus committed the above mentioned offences. The court below found that there is no evidence to show that the accused has misappropriated any amount. The court after considering the evidence found as follows:

> "In the light of the defence taken by the accused suggesting that the Peon on Treasury duty could have made the misappropriation colluding also with the then Supdt. Of the Press who was his immediate superior and who maintained animosity towards him, admitting the prosecution case of non-remittance of the amounts in Treasury as alleged by the prosecution, the evidence in the case is quite insufficient to take one to the irresistible conclusion that the accused himself and none else could have misappropriated the amounts as alleged. No attempt is seen to have been made by the Investigating agency to trace out the original chalan receipts file or records evidencing details of persons posted for treasury duty. The accused is hence entitled at least to benefit of doubt and a consequent acquittal of all the offences with which he stands charged including that of having falsified the accounts as in the absence of misappropriation of funds by the accused committing criminal breach of trust and criminal misconduct, he cannot be said to have falsified also the accounts as according to him he got convinced of the remittances seeing the

> original chalan receipts brough over to him and those were kept also in the office. Thus for want of sufficient evidence on the side of the prosecution to bring home the guilt in the accused, I answer this point in the negative against the prosecution and in favour of the accused, granting him benefit of doubt."

Even otherwise, on the basis of the evidence it cannot be stated that the respondent has misappropriated any amount. In any event, the view taken by the trial court is a possible one. It is not perverse and there is no patent error of law. In the above circumstances, there is no ground to set aside the order of acquittal.

The appeal is dismissed.

J.B.KOSHY
Judge

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